

COPY

Tammy Hussin
 Lemberg & Associates, LLC
 6404 Merlin Drive
 Carlsbad, California 92011
 Telephone: (855) 301-2100 Ext. 5514
 Facsimile: (203) 653-3424

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Luis Navarro

ED

PLAINTIFF(S)

v.

FMS Financial Solutions; and DOES 1-10,
 inclusive,

DEFENDANT(S).

CASE NUMBER

CV 12 - 01204 OP

SUMMONS

TO: DEFENDANT(S): FMS Financial Solutions

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Tammy Hussin, of counsel Lemberg & Associates, whose address is 6404 Merlin Drive, Carlsbad, CA 92011. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

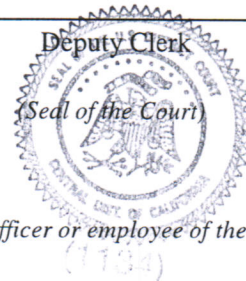
TERRY NAFISI

Clerk, U.S. District Court

JUL 19 2012

Dated: _____

By: _____



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

BY FAX

COPY

1 Tammy Hussin (Bar No. 155290)
 2 Lemberg & Associates LLC
 3 6404 Merlin Drive
 4 Carlsbad, CA 92011
 5 Telephone (855) 301-2100 ext. 5514
 6 thussin@lemberglaw.com

7 Lemberg & Associates, LLC
 8 1100 Summer Street
 9 Stamford, CT 06905
 Telephone: (203) 653-2250
 Facsimile: (203) 653-3424

10 Attorneys for Plaintiff, Luis Navarro

11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 14 EASTERN DIVISION

15 **ED CV 12 - 01204** *OP*

16
 17 Luis Navarro,

18 Plaintiff,

19 vs.

20
 21 FMS Financial Solutions; and DOES 1-10,
 22 inclusive,

23 Defendants.

Case No.:

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRATICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

2012 JUL 19 PM 2:47
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 RIVERSIDE
 BY: _____

FILED

BY FAX

1 For this Complaint, the Plaintiff, Luis Navarro, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
11

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
13 Defendants transact business here and a substantial portion of the acts giving rise to
14 this action occurred here.
15

16 **PARTIES**

17 4. The Plaintiff, Luis Navarro (hereafter "Plaintiff"), is an adult individual
18 residing in Indio, California, and is a "consumer" as the term is defined by 15 U.S.C.
19 § 1692a(3).
20

21 5. Defendant, FMS Financial Solutions ("FMS"), is a Maryland business
22 entity with an address of 9001 Edmonston Road, Suite 20, Greenbelt, Maryland
23 20770, operating as a collection agency, and is a "debt collector" as the term is
24 defined by 15 U.S.C. § 1692a(6).
25
26
27
28

1 6. Does 1-10 (the “Collectors”) are individual collectors employed by FMS
2 and whose identities are currently unknown to the Plaintiff. One or more of the
3 Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. FMS at all times acted by and through one or more of the Collectors.
7

8 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

9 **A. The Debt**
10

11 8. The Plaintiff allegedly incurred a financial obligation in the approximate
12 amount of \$2,091.00(the “Debt”) to Aspen Apartments (the “Creditor”).
13

14 9. The Debt arose from services provided by the Creditor which were
15 primarily for family, personal or household purposes and which meets the definition
16 of a “debt” under 15 U.S.C. § 1692a(5).
17

18 10. The Debt was purchased, assigned or transferred to FMS for collection,
19 or FMS was employed by the Creditor to collect the Debt.
20

21 11. The Defendants attempted to collect the Debt and, as such, engaged in
22 “communications” as defined in 15 U.S.C. § 1692a(2).
23

24 **B. FMS Engages in Harassment and Abusive Tactics**
25

26 12. Within the last year, FMS contacted Plaintiff in an attempt to collect the
27 Debt.
28

1 13. FMS called Plaintiff and left a voice message stating: "Hey Louis, this is
2 Tony. Call me back, buddy!"
3

4 14. Plaintiff returned the call to FMS. During that conversation, FMS failed
5 to inform Plaintiff that the communication was an attempt to collect the Debt and all
6 information obtained would be used for that purpose. Plaintiff did not realize he was
7 speaking with a debt collector until several minutes into the conversation.
8

9 15. FMS then demanded an immediate payment of the Debt to avoid the
10 lawsuit. No payment has been made and no lawsuit against Plaintiff has been filed to
11 date.
12

13 16. FMS made a statement: "I don't want to take it to the judge; it'll be ugly,"
14 causing distress to Plaintiff.
15

16 17. FMS threatened to immediately garnish Plaintiff's wages unless the Debt
17 was immediately paid. FMS did not have legal authority or present ability to garnish
18 Plaintiff's wages.
19

20 18. Plaintiff informed FMS that he would be able to make a payment toward
21 the Debt in a few weeks. FMS responded by telling Plaintiff there was a court date set
22 for July 6th unless Plaintiff made immediate payment of the Debt.
23

24 19. Plaintiff is informed and believes and thereon alleges that no such court
25 date in fact existed.
26
27
28

1 **C. Plaintiff Suffered Actual Damages**

2
3 20. The Plaintiff has suffered and continues to suffer actual damages as a
4 result of the Defendants' unlawful conduct.

5
6 21. As a direct consequence of the Defendants' acts, practices and conduct,
7 the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety,
8 emotional distress, fear, frustration and embarrassment.

9
10 22. The Defendants' conduct was so outrageous in character, and so extreme
11 in degree, as to go beyond all possible bounds of decency, and to be regarded as
12 atrocious, and utterly intolerable in a civilized community.

13
14 **COUNT I**
15 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
16 **15 U.S.C. § 1692, et seq.**

17 23. The Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.

19 24. The Defendants engaged in behavior the natural consequence of which
20 was to harass, oppress, or abuse the Plaintiff in connection with the collection of a
21 debt, in violation of 15 U.S.C. § 1692d.

22
23 25. The Defendants placed calls to the Plaintiff without disclosing the
24 identity of the debt collection agency, in violation of 15 U.S.C. § 1692d(6).

25
26 26. The Defendants used false, deceptive, or misleading representation or
27 means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.
28

1 27. The Defendants misrepresented the legal status of the debt, in violation of
2 15 U.S.C. § 1692e(2).
3

4 28. The Defendants threatened the Plaintiff with garnishment if the debt was
5 not paid, in violation of 15 U.S.C. § 1692e(4).
6

7 29. The Defendants threatened that legal action was pending when in fact it
8 was not, in violation of 15 U.S.C. § 1692e(5).
9

10 30. The Defendants employed false and deceptive means to collect a debt, in
11 violation of 15 U.S.C. § 1692e(10).
12

13 31. The Defendants failed to inform the consumer that the communication
14 was an attempt to collect a debt, in violation of 15 U.S.C. § 1692e(11).
15

16 32. The Defendants used unfair and unconscionable means to collect a debt,
17 in violation of 15 U.S.C. § 1692f.
18

19 33. The foregoing acts and omissions of the Defendants constitute numerous
20 and multiple violations of the FDCPA, including every one of the above-cited
21 provisions.
22

23 34. The Plaintiff is entitled to damages as a result of the Defendants'
24 violations.
25
26
27
28

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 et seq.

35. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The Rosenthal Fair Debt Collection Practices Act, California Civil Code section 1788 et seq. (“Rosenthal Act”) prohibits unfair and deceptive acts and practices in the collection of consumer debts.

37. FMS Financial Solutions, in the regular course of business, engages in debt collection and is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

38. The Defendants threatened the Plaintiff with garnishment or attachment of his wages if the debt was not paid, without intending to institute such proceedings, in violation of Cal. Civ. Code § 1788.10(e).

39. The Defendants did not disclose the identity of the debt collection agency when communicating with the Plaintiff, in violation of Cal. Civ. Code § 1788.11(b).

40. The Defendants failed to comply with the provisions of 15 U.S.C. § 1692, et seq., in violation of Cal. Civ. Code § 1788.13(e).

41. The Defendants falsely represented that a legal proceeding had been or was about to be instituted unless the debt was paid immediately, in violation of Cal. Civ. Code § 1788.13(j).

49. Plaintiff did indeed suffer mental anguish and severe emotional distress including post-traumatic stress, paranoia, and depression.

50. Defendant's conduct resulted in reckless infliction of emotional distress under the laws of the State of California.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;

B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;

C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;

D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

E. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);

F. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent

1 invasions of privacy and intentional infliction of emotional distress in an
2 amount to be determined at trial for the Plaintiff;

3
4 G. Punitive damages; and

5 H. Such other and further relief as may be just and proper.

6
7 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

8
9 DATED: July 19, 2012 TAMMY HUSSIN

10
11 

12 By: _____
13 Tammy Hussin, Esq.
14 Lemberg & Associates, LLC
15 Attorney for Plaintiff, Luis Navarro

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI (a) PLAINTIFFS (Check box if you are representing yourself ☐)

Luis Navarro

DEFENDANTS

FMS Financial Solutions

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Tammy Hussin, 6404 Merlin Drive, Carlsbad, CA 92011
855-301-2300 X 5514

Lemberg & Associates, 1100 Summer St 3rd Fl Stamford CT 06905 2036532250

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No MONEY DEMANDED IN COMPLAINT: \$ Damages, fees, costsVI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity)
15 U.S.C. 1692 - Violations of the Fair Debt Collection Practices Act

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE / PENALTY	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input checked="" type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 610 Agriculture	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 640 R.R. & Truck	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

ED CV 12 - 01204 OP

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Riverside	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	State of Maryland

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Riverside	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involvedX. SIGNATURE OF ATTORNEY (OR PRO PER):  Date July 19, 2012**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))